THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.9520 OF 2006

BETWEEN:

Smt A.Pushpa and another

... Petitioners

and

The Commissioner, MCH, and another

.. Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.9520 OF 2006

ORAL ORDER:

This writ petition is filed aggrieved by the notice bearing

Lr.No.51/TPS/C3/MCH/2005, dated 01.04.2006 issued under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short HMC Act) intimating that the constructions made in the cellar floor converting parking space towards dwelling units/shops are contrary to the sanctioned plan, the petitioner is directed to remove the said unauthorized structure within 24 hours, failing which action would be initiated by the respondent authorities as per the provisions of the MCH Act and that this action has been initiated pursuant to the suo motu contempt case initiated by this Court by order dated 28.02.1996 in C.C.No.101 of 1996 and another dated 08.03.1996 in W.P.No.4795 of 1996.

What the first respondent – Municipal Corporation asserts in the impugned notice is that illegal constructions contrary to the sanctioned plan or the bye-laws which are un-authorized are required to be demolished. The respondent is activated to exercise the statutory powers and to implement the statutory environment on pain of contempt action. Be that as it may.

The petitioner admits that there are constructions in the cellar/stilt portion, but states that the construction is well within the FSI and that the building was eligible for four floors and that the required parking space has not been encroached; as there was height restriction the builder could not achieve the FSI he was eligible for and therefore, constructions were made in the stilt floor.

Prima facie, there is thus an equivocal admission that the constructions in the stilt floor are contrary to the sanctioned plan.

In response to the impugned notice under Section 636 of the HMC Act dated 01.04.2006, the petitioner may submit a representation to the respondent within one week from today together with whatever details and documents he desires to include with the representation, setting out his claim to the legitimacy of the construction in the stilt floor in premises No.3-4-490/A and B, Prem Bagh Apartment, Lingampally, Hyderabad. If such a representation is received from the petitioner within the aforesaid time, the respondents shall pass a reasoned order dealing with all the contentions putforth by the petitioner in his representation submitted pursuant to this order and shall communicate the final decision of the first respondent, and shall pass an order after receipt of the representation of the petitioner. Thereafter, the first respondent is entitled to proceed in accordance with law pursuant to the impugned notice under Section

636 of the HMC Act. Should the first respondent not be satisfied with the petitioner's claim, the 1st respondent is at liberty to proceed under Section 636 of the HMC Act.

The writ petition is disposed of as above at the stage of admission after hearing Sri Srinivas Rao, the learned standing counsel for respondents.

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02-05-2006

Note: issue cc as soon as possible

B/o kvrm